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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,965

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EXAMINER

LAMB, CHRISTOPHER RAY

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/820,965	<b>Applicant(s)</b> SHIONO, HIROYUKI	
	<b>Examiner</b> Christopher R. Lamb	<b>Art Unit</b> 2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-9, 11, 12 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-9, 11, 12 and 14-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5-9, 11, 12, and 14-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujimoto (US 2002/015943).

Regarding claim 1:

Fujimoto discloses:

An optical disc playback apparatus (Fig. 10) which has an optical pickup receiving laser light reflected from an optical disc that is irradiated by laser light (Fig. 10: 1), comprising:

a signal level detector that detects a level of a signal obtained from said reflected laser light (Fig. 10: 17); and

a determining circuit that determines if said optical pickup is located on an information recording area or an information non-recorded area of said optical disc (paragraph 115) according to whether the level detected by the signal level detector continues to be above or below a predetermined reference value during a predetermined time period (paragraphs 150-152).

Regarding claim 2:

Fujimoto discloses:

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Said determining circuit determines that said optical pickup is located on said information non-recorded area when the level detected by the signal level detector continues to be above or below the predetermined reference value during a predetermined time period (paragraphs 150-152).

Regarding claim 3:

Fujimoto discloses:

said optical pickup is made to move to an inner circumference side or an outer circumference side of said optical disc when said determining circuit determines that said optical pickup is located on said information non-recorded area (Fig. 8: step S507; initializing the position of the pickup is described with the prior art in paragraph 8).

Regarding claim 5:

Fujimoto discloses:

an optical pickup position detector that detects whether said optical pickup is located on an inner circumference side of said optical disc (the innermost periphery switch: paragraph 8),

wherein said optical pickup is made to move from said inner circumference side to said outer circumference side when said optical pickup position detector detects that said optical pickup is located on said inner circumference side of said optical disc (once its at the innermost position it is moved to the outer periphery side: paragraph 8).

Regarding claim 6:

Fujimoto discloses:

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an optical pickup position detector that detects whether said optical pickup is located on said inner circumference of said optical disc (the innermost periphery switch: paragraph 8),

wherein said optical pickup is made to move from said outer circumference side to said inner circumference side when said optical pickup position detector detects that said optical pickup is not located on said inner circumference side of said optical disc (when it detects it is an unrecorded area it initializes the position, as per Fig. 8: step S507; initializing the position involves moving to the innermost periphery until the innermost periphery switch is pressed: paragraph 8).

Regarding claims 7-9, 11, and 12:

Fujimoto discloses:

said signal obtained from said reflected laser light is an RF signal, and said level is a peak-to-peak difference value of the RF signal (paragraph 115: that the "signal amplitude of the RF signal" is a peak-to-peak difference signal can be seen in Fig. 9c).

Regarding claims 14-18:

These are method claims corresponding to the earlier apparatus claims and are met when the apparatus operates.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujimoto.

Regarding claim 19:

Fujimoto discloses an optical disc playback apparatus as discussed above in the rejection of claim 1.

Fujimoto does not disclose wherein "the predetermined time period is about 20 milliseconds."

However, Fujimoto does disclose that the predetermined time period must last long enough to accurately detect the RF signal (paragraph 152).

Thus it would have been obvious to one of ordinary skill in the art to include in Fujimoto wherein the predetermined time period is about 20 milliseconds.

The motivation would have been: in the course of routine engineering optimization/experimentation to determine the necessary time period. Moreover, absent a showing of criticality, i.e., unobvious or unexpected results, the relationships set forth in these claims are considered to be within the level of ordinary skill in the art.

Additionally, the law is replete with cases in which the mere difference between the claimed invention and the prior art is some range, variable or other dimensional limitation within the claims, patentability cannot be found.

It furthermore has been held in such a situation, the applicant must show that the particular range is critical, generally by showing that the claimed range achieves unexpected results relative to the prior art range(s); see *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990).

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Moreover, the instant disclosure does not set forth evidence ascribing unexpected results due to the claimed dimensions; see *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338 (Fed. Cir. 1984), which held that the dimensional limitations failed to point out a feature which performed and operated any differently from the prior art.

Regarding claim 20:

It is a method claim corresponding to claim 19 and it met when the apparatus operates.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-3, 5-9, 11, 12, and 14-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Lamb whose telephone number is (571) 272-5264. The examiner can normally be reached on 9:00 AM to 6:30 PM Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Korzuch can be reached on (571) 272-7589. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CRL 4/27/07

  
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